EUROPEAN ECONOMIC COMMUNITY
Official Spokesman
of the Commission

23, Avenue de la Joyeuse Entrée
Brussels 4
Telephone 35.00.40

Brussels, 28 November 1966.
IP(66) 147

PRESS RELEASE

December 31st 1966 maintained as time-limit for notification of agreements between firms ante-dating regulation 17 of March 1962.

At the beginning of September(1), the Commission of the European Economic Community announced that it did not intend to propose to the Council of Ministers that it should extend the time-limit for notification of "old" agreements for which the parties concerned wished to avail themselves of the possibility of adjusting them to comply with the terms of Article 85 of the EEC Treaty. This time-limit is only important for "old" agreements, i.e. for agreements which were already in existence on 13 March 1962, the date on which Regulation No. 17 came into force, and which are not subject to notification. Nor will they be subject to notification in future. Only if the parties concerned wish to apply for retrospective exemption and immunity from fines, is it necessary for these agreements to be notified by 31 December 1966(2) - if indeed that has not already been done.

As background information to this decision we give below - without prejudice to any interpretation by the Court of Justice of the European Communities - a list of the categories of "old" agreements for which notification is advisable and of those for which it may, as a general rule, be considered unnecessary.

1. Agreements for which notification is advisable

When the effects of "national" agreements, i.e. agreements to which firms of only one Member State are party, are confined to one Member State or to markets outside the EEC, they generally do not fall under the ban of Article 85(1). If such agreements concern imports or exports, they were already subject to notification. In so far as national agreements do not directly concern imports or exports, notification may, as a general rule, only be considered necessary in the following cases :

(a) Collective obligations to buy exclusively from certain manufacturers or dealers or to deliver exclusively to certain buyers within one Member State. Such obligations may lead to particularly serious cases of market-sharing depending on groups of customers;

.../...

(1) See Annex.

(2) Originally the time-limit for notification was to expire on 31 December 1963. Regulation No. 118/63/CEE extended it by 3 years (official gazette No. 162, 7 November 1963).

(b) Agreements on aggregated rebates, without the inclusion of purchases from other Member States. Because of this non-inclusion, buyers have an incentive to buy mainly from manufacturers in their own Member State;

(c) Horizontal agreements on the resale prices of imported products. Such agreements are as conceivable between importers, in order to eliminate price competition between them, as between importers and producers in order to regulate imports.

In the above cases, the adverse effects on competition are so serious that the parties concerned must reckon both with action by third parties and - depending on the circumstances - with the imposition of a fine if the agreement has not been notified.

2. Agreements for which notification is generally considered unnecessary

(a) Resale price maintenance

If the effects of the imposition of prices and conditions on the reseller are confined to one Member State, as is usually the case when prices are imposed within one country only, they generally do not fall under the ban on cartels. In that case, notification is therefore unnecessary. If these agreements concerning the imposition of prices and conditions are guaranteed by arrangements governing imports or exports, particularly by a ban on exporting or importing, such restrictions were already subject to notification. In other cases where resale prices and conditions are imposed, it is unlikely that there would be any reason for notification.

(b) Bilateral licensing contracts

Such contracts generally do not fall under the ban of Article 85 when the restrictions do not have effects extending beyond the frontiers of one Member State. The same is true when the restrictions are maintained under the law on industrial property, of which the Commission's communication on patent-licensing contracts[1] gives a few examples, and therefore do not pursue objectives contrary to the Treaty. In both cases, notification is therefore pointless. If licensing contracts contain restrictions which do not bear any relation to the exercise of industrial property rights and are likely to have an adverse effect on trade between Member States, they were already subject to notification. On the other hand, if the restrictions bore a close relation to the exercise of industrial property rights, notification would not be necessary.

.../...

(1) Official gazette of the European Communities No. 139, 24 December 1962, p. 2922.

(c) Agreements on the development or application of standards and types, and on joint research

If they are concluded between firms at the same business level in one Member State and do not contain any substantial restraint of competition, these agreements do not generally fall under the ban, because their effects are usually confined to the said Member State. Apart from this, these agreements may be exempt when they take sufficient account of the interests of consumers and are not discriminatory in character, with the result that notification is generally pointless.

The Commission's Communication on the expiry of the time-limit laid down in Article 7(2) of Regulation No. 17 of 1 September 1966 for the notification of "old" agreements

1. The Commission points out that the time-limit for notifying "old" agreements(1), for which the parties concerned wish to claim benefit of the provisions of Article 7(2) of Regulation No. 17(2), is 31 December 1966. The Commission does not intend to propose to the Council that this time-limit be extended.

2. In order to enable the firms concerned to assess the advantages that notification may offer, the importance of the expiry of this time-limit is made clear below :

---

(1) "Old agreements" means agreements between firms, decisions by associations of firms and concerted practices of the kind referred to in Article 85(1) which were already in existence at the date of the entry into force of Regulation No. 17, i.e. on 13 March 1962.

(2) Official gazette No. 13, 21 February 1962, p. 204/62 amended by Regulation No. 118/63/CEE, official gazette No. 162, 7 November 1963, p. 2696/63. The text of Article 7 is now as follows :

"Special provisions for existing agreements, decisions and practices"

1. Where agreements, decisions and concerted practices already in existence at the date of the entry into force of the present Regulation and of which the Commission has been notified within the time-limit set out in Article 5, paragraph 1, do not meet the requirements of Article 85, paragraph 3, of the Treaty, and where the enterprises and associations of enterprises concerned put an end to them or modify them so that they no longer fall under the prohibition laid down in Article 85, paragraph 1, or so that they then meet the requirements of Article 85, paragraph 3, the prohibition laid down in Article 85, paragraph 1, shall be applicable only for a period fixed by the Commission. A decision by the Commission pursuant to the foregoing sentence cannot be invoked against enterprises or associations of enterprises which have not given their express assent to the notification.

2. Paragraph 1 shall be applicable to agreements, decisions and concerted practices which are already in existence at the date of the entry into force of the present Regulation and which fall within the categories referred to in Article 4, paragraph 2, provided that notification shall have taken place before 1 January 1967."

.../...

(a) Notification in order to claim benefit of the provisions of Article 7 of Regulation No. 17 is only of advantage for agreements, decisions by associations of enterprises and concerted practices which :

(i) meet the requirements of Article 85, paragraph 1, of the Treaty, i.e. which :

firstly, have as their object or result the prevention, restriction or distortion of competition within the Common Market, and

secondly, are likely to have an adverse effect on trade between the Member States

(The expiry of this time-limit is therefore of no moment for agreements whose effects are felt only in one Member State or outside the Common Market);

(ii) were already in existence on 13 March 1962 (The expiry of the time-limit is of no moment for all agreements concluded after that date);

(iii) fall in one of the categories(1) mentioned in Article 4, paragraph 2, of Regulation No. 17;

(The expiry of the time-limit is of no moment for all other agreements which were to be notified before 1 November 1962 or 1 February 1963 by virtue of Article 5, paragraph 1, of Regulation No. 17, whether or not they have been so notified);

---

(1) These are "agreements, decisions and concerted practices where :

1. enterprises of only one Member State take part and where such agreements, decisions and practices involve neither imports nor exports between Member States;

2. only two enterprises take part and the sole effect of these agreements is :

   (a) to restrict the freedom of one party to the contract to fix prices or conditions of trading in the resale of goods which have been acquired from the other party to the contract, or

   (b) to impose restraint on the exercise of the rights of any person acquiring or using industrial property rights - particularly patents, utility models, registered designs or trade marks - or on the exercise of the rights of any person entitled, under a contract, to acquire or use manufacturing processes or knowledge relating to the utilization or application of industrial techniques;

3. their sole object is :

   (a) the development or the uniform application of standards and types,

   (b) joint research to improve techniques, provided that the result is accessible to all parties and that each of them can exploit it."

.../...

(iv) which do not meet, or have not met by 13 March 1962, the requirements laid down in Article 85, paragraph 3 (The expiry of the time-limit is therefore also of no moment for old agreements which, according to the practice hitherto followed by the Commission in its decisions or according to the communications made by the latter, may hope to benefit, from 13 March 1962, from exemption by virtue of Article 85, paragraph 3);

(b) In order to determine whether notification must be made, it is necessary to consider the scope of Article 7. This provision gives the Commission the right to fix a date later than 13 February 1962 as the one on which the prohibition laid down in Article 85 shall take effect, where the enterprises and associations of enterprises concerned :

(i) put an end to the agreements, decisions and concerted practices which have been notified, or

(ii) modify them so that they no longer fall under the prohibition laid down in Article 85, paragraph 1, or so that they then meet the requirements of Article 85, paragraph 3.

The decision taken in pursuance of Article 7 is therefore only important as regards the period of incompatibility with Article 85 prior to the decision, since no third party may any longer invoke, therefore, the prohibition laid down in Article 85, paragraph 1, to support a claim for damages. It is therefore only to the advantage of enterprises to make such notification, from the point of view of Article 7, paragraph 2, when they expect that third parties will bring an action for damages against them for the said period.

(c) In order to determine whether notification must be made, it is necessary to consider, in addition, Article 15, paragraph 5 b, of Regulation No. 17. Under this clause, fines for infringement of the provisions of Article 85, paragraph 1, may not be imposed for actions taking place "prior to the notification of and within the framework of the agreements, decisions and concerted practices existing at the date of entry into force of the present Regulation, provided that this notification has been made within the time-limits laid down in Article 5, paragraph 1, and Article 7, paragraph 2". This immunity from fines, which presupposes notification made before 1 January 1967, is, however, of no importance except in cases of serious infringement, since under Article 15, paragraph 2, a fine can only be imposed when enterprises have wilfully or by negligence infringed the provisions of Article 85, paragraph 1.